

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #07	CCRB Case #: 202206429	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/24/2022 2:47 PM	Location of Incident: 37-06 77th Street	18 Mo. SOL 3/24/2024	Precinct: 115		
Date/Time CV Reported Sat, 09/24/2022 7:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 09/24/2022 7:44 PM		
Complainant/Victim	Type	Home Address			
Subject Officer(s)	Shield	TaxID	Command		
1. PO Aaron Ayala	25252	946443	CAB COD		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. PO Cathleen Lang	23900	969879	CAB COD		
2. PO Bayron Gonzalez	18228	962900	115 RSVLT TF		
3. PO Megan Finnerty	06396	970517	115 PCT		
4. PO Daniel Delrio	01299	951673	115 PCT		
Officer(s)	Allegation	Investigator Recommendation			
A. PO Aaron Ayala	Abuse: Police Officer Aaron Ayala took a recording of individuals.				

Case Summary

On September 24, 2022, § 87(2)(b) filed this complaint via the CCRB website.

On September 24, 2022, at approximately 2:47 p.m., § 87(2)(b) stood on a sidewalk outside 37-06 77th Street in Queens. An event titled “Drag Queen Story Time” was taking place in the vicinity, near a school, and § 87(2)(b) was there, by himself, to protest this event. § 87(2)(b) saw that a uniformed NYPD officer, PO Aaron Ayala of the Community Affairs Bureau, used a device he thought to be PO Ayala’s personal phone in a manner he thought to be PO Ayala recording digital media of people present at the event and protest (**Allegation A -Abuse of Authority: Photography/Videography,** § 87(2)(g) [REDACTED]).

§ 87(2)(b) was not arrested or issued a summons as a result of this incident.

§ 87(2)(b) recorded video footage of this incident with a personal device; he provided this footage to the CCRB (Board Review 01 and 02), and it was summarized (Board Review 03). Body-Worn Camera footage of the incident recorded by two officers was provided to the CCRB by the NYPD’s Legal Bureau (Board Review 04 and 05), and it was summarized (Board Review 06). Footage recorded by exterior surveillance cameras near the incident location was received from the NYC Department of Education (DoE) (Board Review 07) and deemed to be irrelevant.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Aaron Ayala took a recording of individuals.

It is undisputed that on September 24, 2022, at approximately 2:47 p.m., § 87(2)(b) interacted with PO Ayala during an event occurring in the vicinity of 37-06 77th Street in Queens and that PO Ayala used his personal cell phone to record video footage during the event. It is further undisputed that § 87(2)(b) confronted PO Ayala about the footage PO Ayala recorded, that he demanded that PO Ayala delete the footage, and that PO Ayala deleted this footage; this is corroborated by the footage § 87(2)(b) recorded.

§ 87(2)(b) stated to the CCRB (Board Review 08) that he arrived at the location with the intent to protest a block party he knew to be titled “Drag Queen Story Time” because he thought the event represented an inappropriate presentation of sexually themed material to children. The “story time” portion of the event lasted approximately five minutes, and after this, § 87(2)(b) remained in the area, facing the school where approximately forty people, including approximately eight officers, had gathered. An individual, who § 87(2)(b) thought was an event organizer, held a microphone and made announcements. PO Ayala approached and hugged this person. PO Ayala removed a phone from his right rear pants pocket and used it in a manner that, due to PO Ayala holding it with one hand and moving it, § 87(2)(b) thought to be PO Ayala recording video footage of protestors and other individuals present, pointing the phone towards the crowd of people present. This lasted approximately ten to fifteen seconds, during which time § 87(2)(b) did not hear any interaction PO Ayala had with anyone. § 87(2)(b) thought that the device, which had a gold color, was PO Ayala’s personal phone.

§ 87(2)(b) approached PO Ayala and asked whether he had used a Department-issued phone to record digital media. PO Ayala denied using a personal phone to do so. PO Ayala walked away from § 87(2)(b) who followed him. PO Cathleen Lang of the Community Affairs Bureau came to where § 87(2)(b) and PO Ayala stood, and this group spoke about officers’ use of phones for approximately four to five minutes, during which time PO Ayala removed a black phone with a red and black sticker on it from his front left pants pocket and told § 87(2)(b) that it was the phone he

had used.

PO Ayala removed a phone from his right rear pants pocket, displayed it to § 87(2)(b) stated that he would delete the video footage file, and took an action that § 87(2)(b) thought was his deleting the file.

PO Ayala stated to the CCRB (Board Review 09) that he began recording footage during this incident because an unidentified councilwoman who spoke at the event danced with eventgoers in a “cool moment” that PO Ayala wished to capture on video for possible use by Community Affairs. PO Ayala selected his personal phone to record footage in this incident because its camera was superior to that of his Department-issued phone and captured higher quality photos and videos that may be used on the Community Affairs Twitter account and for no other reason. PO Ayala intended to send the file to his Department-issued phone and then send it from that phone, via email or text message, to an officer who had access to the NYPD Twitter account where such files from Community Affairs officers would be uploaded.

When asked during his CCRB interview about his understanding of officers being permitted to use personal phones while on duty, he stated that such use should be reasonable and safe insofar as not paying undue attention to a phone while on duty. When taking photos or recording video footage during events, particularly for Community Affairs officers, the use of phones is a “choose your own adventure” scenario. When asked whether this understanding came from training, supervisory instruction, or other guidance, PO Ayala stated that this came from a lack of guidance and that he was not aware of whether the Patrol Guide prohibits officer use of personal phones.

PO Ayala had never received instructions from a supervisor about being either explicitly permitted or prohibited from using a personal phone on duty. PO Ayala had never spoken with other officers about the distinction between officer use of personal and Department-issued phones and had never become aware of any issues or potential issues that arose in his assignment related to this distinction.

BWC footage and footage received from the Department of Education did not capture material context related to this allegation.

According to the NYPD Patrol Guide, Procedure 219-32, an officer may not use any personal cellular phone, smartphone or tablet to conduct official Department business, except under exigent circumstances (Board Review 10).

As noted above, it is undisputed that PO Ayala used his personal cell phone to record video during this incident. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- PO Ayala has been a member of service for fourteen years and has been a subject in one CCRB complaint and one allegation, which was not substantiated § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of November 1, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 7

Investigator:



Signature

SI Chris Anderson

Print Title & Name

11/17/2022

Date

Squad Leader:

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date